

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

MICHAEL ROSATO AND AUGUSTO SCIULLO,	:	In re: 4913 Sciota Street, Pittsburgh, PA 15224
	:	
Appellants,	:	Docket no. ACHD-20-006
	:	
v.	:	<u>Copies Sent To:</u>
	:	<i>Counsel for Appellants:</i>
ALLEGHENY COUNTY HEALTH DEPARTMENT,	:	Jason M. Plakosh, Esq.
	:	P.O. Box 184
	:	Sewickley, PA 15143
Appellee.	:	
	:	<i>Counsel for ACHD:</i>
	:	Vijya Patel, Esq.
	:	301 39 <sup>th</sup> Street, Building 7
	:	Pittsburgh, PA 15201

DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH  
DEPARTMENT HEARING OFFICER

**I. INTRODUCTION**

This case concerns the timeliness of repairs made to a dwelling in Bloomfield. Appellants Michael Rosato (“Mr. Rosato”) and Augusto Sciullo (“Mr. Sciullo”) (collectively “Appellants”) own the rental unit at 4913 Sciota Street, Pittsburgh, PA 15224 (the “Property”). In August of 2019, the Allegheny County Health Department (“ACHD” or the “Department”) inspected the Property and found numerous violations of the ACHD’s housing regulations, including: inadequate number of electrical outlets in a second-floor bedroom, a gap in the living room floor, a hole in the kitchen ceiling, a covered radiator, and a missing stair rail.

The ACHD conducted follow-up inspections in September and November of 2019 and found that these violations remained at the Property. After the third

inspection, in November 2019, the ACHD assessed a civil penalty against Appellants for \$2,500.

Mr. Sciullo and Mr. Rosato appealed the civil penalty, contending that the penalty was unjustified principally because Appellants promptly fixed the violations after a conference with ACHD personnel in March 2020. The ACHD asserts that the civil penalty was justified because Appellants did not make repairs until nearly seven months after the ACHD notified them of the violations.

After reviewing the relevant rules and regulations, as well as the evidence, testimony, and position statements submitted by the parties, this tribunal finds that the Department met its burden of proving by a preponderance of the evidence that the \$2,500 civil penalty was justified. Appellants' appeal is therefore dismissed.

## **II. EVIDENCE**

The following exhibits were introduced by the ACHD<sup>1</sup>:

- D1: August 16, 2019 Inspection
- D2: September 25, 2019 Inspection
- D3: November 26, 2019 Inspection
- D4: Penalty Assessment Letter
- D5: September 27, 2019 Memo
- D6: February 11, 2020 Memo
- D7: May 27, 2020 Letter

## **III. STATEMENT OF FACTS**

1. Appellants Michael Rosato ("Mr. Rosato") and Augusto Sciullo ("Mr. Sciullo") (collectively "Appellants") own the rental unit at 4913 Sciota Street, Pittsburgh, PA 15224 (the "Property"). (Hearing Transcript ("H.T.") at 5).
2. The tenant at the Property, as of October 2019, is Duane Jones ("Mr. Jones"). (H.T. at 5).

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<sup>1</sup> Appellants did not offer any exhibits into evidence.

3. On August 16, 2019, Issa Tijani (“Mr. Tijani”) an Environmental Health Specialist I for the ACHD’s Housing Division, inspected the Property. (Ex. D1; H.T. at 22).
4. At this inspection, Mr. Tijani noted the following violations of the ACHD’s Rules and Regulations, Article VI (Housing and Community Environment):
  - a. Inadequate number of electrical outlets in a second-floor bedroom;
  - b. A gap in the living room floor;
  - c. A hole in the kitchen ceiling;
  - d. A covered radiator; and
  - e. A missing stair rail. (Ex. D4).
5. Both Appellants and the ACHD agree that the violations pertaining to the radiator cover and the stair rail were the responsibility of Mr. Jones, rather than the Appellants. (H.T. at 18).
6. On September 25, 2019, Mr. Tijani conducted a follow-up inspection of the Property, which noted that the violations remained uncorrected. (Ex. D2; H.T. at 23).
7. On November 26, 2019, Mr. Tijani conducted his third inspection of the Property, and also found that the violations remained uncorrected. (Ex. D3; H.T. at 23).
8. On January 2, 2020, following the third inspection, Mr. Tijani issued a civil penalty letter to Appellants for \$2,500 regarding the violations at the Property. (Ex. D4; H.T. at 24).
9. The ACHD typically issues civil penalties only after a third inspection in which there has been no corrective action taken by the property owner(s), which was the case here. (H.T. at 17-18).
10. On February 11, 2020, Mr. Tijani drafted a memo to file indicating that he spoke with Mr. Rosato, and that Mr. Rosato did not plan to make repairs to the Property because he wanted to remodel it. (Ex. D6; H.T. at 27-28).
11. On March 5, 2020, Mr. Tijani met with Appellants, their counsel, and Mr. Jones to discuss the violations at issue. (H.T. at 29-30, 33).
12. On May 20, 2020, Mr. Tijani re-inspected the Property and found that Appellants had corrected all the violations at issue. (Ex. D7; H.T. at 28).
13. On October 16, 2020, an administrative hearing in this matter was held.

## IV. DISCUSSION

### A. Relevant Regulations

Pursuant to ACHD Rules and Regulations, Article XI § 1105.C.7, the ACHD bears the burden of proof in an administrative appeal when it assesses a civil penalty. To prevail in its appeal, the ACHD must prove by a preponderance of the evidence that the penalty was properly levied in light of the continuing violations present at the Property. The preponderance of the evidence standard requires proof by a greater weight of the evidence and is equivalent to a “more likely than not standard.” *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Commw. Ct. 2002).

The specific housing violations that the ACHD cited in its civil penalty assessed against Appellants were the following violations of ACHD Rules and Regulations, Article VI:

- § 622—General Structure: Principal Members
- § 623—General Structure: Stairs and Porches
- § 628(A)—Utilities and Fixtures: Electric Fixtures and Outlets
- § 629(A)—Utilities and Fixtures: Heating

Also at issue is ACHD Rules and Regulations, Article XVI § 1605, which provides, in relevant part:

“In determining the amount of civil penalties to be assessed, the Director shall consider the economic benefit gained by such person by failing to comply with the Article, the willfulness of the violation, the actual and potential harm to the public health, safety and welfare and to the environment, the nature, frequency and magnitude of the violation, and any other relevant factors.”

## **B. Timing of the Repairs**

Appellants contend that because they fixed the violations at issue shortly after the meeting between themselves and ACHD representatives, there were no grounds to issue the civil penalty: “The testimony is uncontroverted that [Appellants] rectified the remaining alleged violations within three days of the March 5, 2020 [meeting].” (*Appellants’ Brief* at 2). Appellants also assert in their brief that the civil penalty should not be imposed because Mr. Tijani did not re-inspect the property until more than two months after the repairs were made: “It is also uncontroverted that Mr. Tijani failed to re-inspect the property, possibly as a result of the negligence of his supervisors, until May 20, 2020.” (*Id.*).

The ACHD responds that regardless of that delay in reinspection in 2020, Appellants simply failed to make the necessary repairs to the Property until seven months after the ACHD informed Appellants of the violations in August of 2019. The ACHD states, “The Department provided Appellants more than three months to make repairs before the penalty was assessed.[...] From Appellants’ own testimony, these repairs could have been completed in three days, but instead, they waited seven months.” (*ACHD Brief* at 3).

This tribunal finds that the ACHD has the better argument here. The relevant timeframe is not the period between the March 2020 meeting and the subsequent reinspection; it’s between when the violations were issued and when Appellants corrected them.

Here, the ACHD conducted inspections of the Property and issued notices of violation to Appellants in August 2019, September 2019 and November 2019. (Exs. D1-D3). Appellants did not make the necessary repairs until March 2020, more than six months after the initial notice of violation and more than three months after the civil penalty was assessed. Appellants' argument about Mr. Tijani's delay in re-inspecting the Property between March 2020 and May 2020 is not relevant here.

### **C. Justification for the Civil Penalty**

Appellants argue that the ACHD "has not offered any testimony establishing any of the factors required by Article 1605(C) to be considered in determining the amount of civil penalties." (*Appellants' Brief* at 2). Specifically, Appellants point out that the ACHD did not offer any testimony indicating a) the willfulness of any purported violation, (b) actual and potential harm to the public health, safety and welfare and/or to the environment, (c) the nature, frequency and magnitude of the violation, or (d) economic benefit gained by Appellants for non-compliance. (*Id.*).

The ACHD counters that the civil penalty was justified because Appellants were aware of the violations at issue, but consciously decided not to repair them. The ACHD cites to Appellant Michael Rosato's testimony: "Mr. Rosato admitted to this tribunal that he was aware of the Landlord Violations but that he chose not to repair them because he wanted to sell the Property and he did not want to spend any money on the Property." (*ACHD Brief* at 3; H.T. at 13-14).

This tribunal concurs with the ACHD. The ACHD informed Mr. Rosato and Mr. Sciullo of the violations at the Property during the inspection on August 16, 2019. (Ex. D1). The ACHD again informed Appellants of the outstanding violations a month later during the September 25, 2019 inspection, and then again on November 26, 2019, when the ACHD assessed the civil penalty. (Exs. D2, D3). Mr. Rosato admitted at the hearing that he received these notices. (H.T. at 19-20, 22-24). The evidence clearly indicates Appellants were aware of the violations long before they finally corrected them in March of 2020. Appellants' dilatoriness in repairing the violations at issue here speaks to willfulness, and justifies the \$2500 civil penalty.

## V. CONCLUSION

This tribunal finds that the ACHD has met its burden of proving by a preponderance of the evidence that the \$2,500 civil penalty was justified. Appellants' appeal is therefore **DISMISSED**. This decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.

*Max Slater*

Max Slater, Esq.  
Administrative Hearing Officer  
Allegheny County Health Department

Dated: April 15, 2021